IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

MONDAY, THE 19TH FEBRUARY 2007 / 30TH MAGHA 1928

WP(C).No. 32321 of 2006(W)

PETITIONER:

T.BABURAJ, DEPUTY PRODUCTION MANAGER (TECHNICAL), HINDUSTAN INSECTISIDES LIMITED, UDYOGAMANDAL-683 501.

BY ADV. SRI.ELVIN PETER P.J.
SRI.C.X.ANTONY BENEDICT
SRI.PRADEEP KRISHNA

RESPONDENTS:
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1. **THE HINDUSTAN INSECTICIDES LIMITED, REP. BY ITS CHAIRMAN AND MANAGING DIRECTOR, SCOPE COMPLEX, CORE-6, 2ND FLOOR, 7 LODI ROAD, NEW DELHI-110 003.**

2. **THE CHIRMAN-CUM-MANAGING DIRECTOR, HINDUSTAN INSECTICIDES LIMITED, SCOPE COMPLEX, CORE-6, 2ND FLOOR, 7 LODHI ROAD, NEW DELHI-110 003.**

3. **THE DEPUTY GENERAL MANAGER (P&A), HINDUSTAN INSECTICIDES LIMITED, UDYOGAMANDAL-683 501.**

4. **K.K.JOSEPH, GENERAL MANAGER, HINDUSTAN INSECTICIDES LIMITED, UDYOGAMANDAL-683 501.**

5. **SRI.BALASUBRAMANIAN, DEPUTY COMMERCIAL MANAGER, HINDUSTAN INSECTICIDES LIMITED, UDYOGAMANDAL-683 501.**

6. K.K.DHAR,
DEPUTY GENERAL MANAGER(TECHNICAL),
HINDUSTAN INSECTICIDES LIMITED,
UDYOGAMANDAL-683 501.

R1 TO R3 BY ADV. SRI.A.M.SHAFFIQUE
SRI.A.M.SHAFFIQUE
SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 32321/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE REPRESENTATION FILED BY THE GENERAL SECRETARY, HIL OFFICERS ASSOCIATION.

EXT.P2. COPY OF THE PETITION DT. 27/5/2006 SUBMITTED BY THE PETITIONER TO R3.

EXT.P3. COPY OF THE ORDER DT. 4/12/2006 TO THE PETITIONER BY R3.

EXT.P4. COPY OF THE ORDER DT. 4/12/2006 ISSUED TO THE PETITIONER BY R3.

RESPONDENT'S EXHIBITS

EXT.R3A. COPY OF THE ORDER OF THE APPOINTMENT OF THE PETITIONER DT. 21/08/85, NO. PE-3/85.

EXT.R3B. COPY OF THE ORDER OF THE TRANSFER WAS ISSUED BY THE HEAD OFFICE ON 4TH DECEMBER, 2006.

True copy

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K.K.DENESAN, J

W.P.(C)NO.32321 of 2006

Dated this the 19th day of February, 2007

JUDGMENT

The petitioner has been working as Deputy Production Manager (Technical) under the respondents. He challenges Ext.P3 order transferring him from the Udyogamandal Unit of the first respondent to Bathinda in Punjab passed by the third respondent. The petitioner is Serial No.3 in that order. The impugned order shows that besides the petitioner, one Mathew Varghese has been transferred from Udyogamandal Unit to Rasayani Unit, Maharashtra, Sri.R.K.Goswami and Sri. A.K.Srivastava from Rayasani Unit to Udyogamandal Unit.

2. Ext.P3 is challenged mainly on the ground that it is vitiated by malafides. The circumstances under which the petitioner feels that his transfer from Udyogamandal Unit to Bathinda is vitiated by malafides, are the following:

3. The petitioner is the Vice President of Hindustan Insecticides Limited Officers Association. The President of the Association is a Member of Parliament Dr.Sebastian Paul. As the Vice President of the Association, the petitioner had to take very many causes in order to protect the interest of the officers as well as that of HIL. Recently the Company proposed to erect an Incinerator. In order to erect the said Incinerator tenders were invited by the Company and thereafter the contract was awarded to M/s HAAT, which is a Bangalore based Company. Respondents 4 and 5 played a dubious role in awarding contract to M/s HAAT. The decision to award contract to M/s HAAT was taken by a Committee which consisted of respondents 4 and 5 as well as the petitioner and other few officers. After the award of the contract to M/s HAAT, during the execution of the contract M/s HAAT committed various procedural irregularities. The materials used for erection of Incinerator was of low quality and far below the standards required to be maintained by the Company as laid down in the conditions of the contract. The petitioner wanted to protect the interest of the Company and objected to the

execution of the contract by M/s HAAT. When the petitioner raised his objection in the execution of the erection of Incinerator by M/s HAAT, respondents 4 and 5 who had given cart-blanche to M/s HAAT to execute the contract as they like on extraneous considerations, removed the petitioner from the Committee by divesting of his duties as the Deputy Protection Manager (Technical). Thereafter respondents 4 and 5 sanctioned payments to M/s HAAT in gross violation of the conditions of the contract for personal gains and on extraneous considerations. The petitioner, on coming to know of the above illegal activities of respondents 4 and 5 submitted a representation (Ext.P1) through the Secretary of the Association to the 4th respondent. The submission of Ext.P1 was not welcomed by respondents 4 and 5 and they found it inconvenient to perpetuate their illegality. Regarding the erection of Incinerator in the Company by M/s HAAT and the payments made there were widespread allegations which were reported in all the leading Newspapers. The petitioner as the Vice President of the Association as well as other Officers of the Association compelled the 4th respondent to

convene a meeting to clarify the entire issue. Hence the 4th respondent left with no other remedy was compelled to convene a meeting in the 3rd week of July, 2006. In the said meeting majority of the officers participated and the petitioner as the Vice President of the Association had to ask several questions which were inconvenient to the 4th respondent. Consequently, the 2nd respondent himself had to convene a meeting in the month of September, 2006. In the said meeting the petitioner as well as other Officers brought to the notice of the Chairman and Managing Director, the illegalities committed by respondents 4 and 5 in connection with the erection of the Incinerator by M/s HAAT. Regarding the entire issue of erecting the Incinerator and the allegations of corruption which were in air, the Central Bureau of Investigation (CBI) conducted an investigation. Raids were conducted in the residence as well as the offices of respondents 4, 5 and 6 and the CBI being convinced that there was corruption in the erection of Incinerator by M/s HAAT, registered a FIR against respondents 4 to 6 as well as the Officers of M/s HAAT.

4. The above allegations made by the petitioner are sought to be countered by the sworn averments made in the affidavit filed on behalf of respondents 1 and 3. The counter affidavit while denying the allegations in the W.P.(C) inter alia says

> "..... the Bhathinda Unit of the Company was commissioned in 2003. The Unit employs around 300 personnel and there existed a requirement of a Chemical Engineer at the level of Deputy Manager. The Unit operates full-scale formulation facilities handling various chemicals and qualified Chemical Engineer at senior level is an absolute necessity for safe operations of the plants. It was in order to fill up the said vacancy, the Head Office of the Company was considering the availability of suitable person with qualification in Chemical Engineering and adequate experience. While considering the suitability of the candidates available, the Head Office also considered whether such candidates could be spared from their present assignments. While so, the Head Office decided that the petitioner was the ideal person to be transferred and posted without affecting the production or other work of the Udyogamandal Unit. It was also decided that suitable alternate arrangements will be made by assigning the duties of the post that were discharged by the petitioner to the existing Officers of the Units."

5. Having considered the submissions made by the counsel on either side, I am of the view that it may not be safe to draw the inference that the petitioner's transfer is the result of the

alleged ill will or displeasure entertained by the respondents, as apprehended by the petitioner. The fact that certain contingencies arose in the wake of the implementation and operation of the first respondent Company in different parts of the country, is evident from the pleadings of the respondents. Bhathinda Unit of the company was commissioned in 2003. That Unit employs around 300 personnel. The Company is in need of a Chemical Engineer at the level of Deputy Manager. While dealing with the problem of filling up the vacancy of a Chemical Engineer in that Unit, the question of transferring a duly qualified Manager came up for consideration. It was found that the petitioner's service would be useful for the effective operation of the Bathinda Unit and Ext.P3 order was passed.

6. It is pertinent to note that it is not the petitioner alone who has been transferred from Udyogamandal Unit to a place outside the State. Sl.No.1 in Ext.P3 has been transferred to the State of Maharashtra. The allegation that the active role played by the petitioner in bringing out certain misdeeds on the part of some of the officers has led to the impugned transfer does not

appear to be the basic reason for passing an order in the nature of Ext.P3. Probably, because of the role played by him, as stated above, he might have entertained the bonafide feeling that he has been chosen for a transfer to a far away place. Such feelings alone cannot form the foundation for demolishing Ext.P3. In the above view of the matter, the contention that Ext.P3 is vitiated by malafides is rejected. I do not propose to interfere with Ext.P3 order. The prayer is declined.

7. The petitioner has been on leave ever since he has been served with Ext.P3 order. As rightly submitted by the Counsel for the petitioner, there is good reason for him to remain on leave. Personal reasons coupled with the interim order passed by this Court on 5.12.2006 justifies his conduct. Now that I have declined to interfere with Ext.P3, the petitioner has to go and take charge of the assignment given to him as per Ext.P3. Standing Counsel for the respondents submits that immediately on certain important and urgent works getting executed, it will be open to the petitioner to apply for leave and also for re-transfer to Udyogamandal, if he so chooses. I think, the petitioner will be

well advised to join duty, discharge the essential works to be carried out there, and immediately thereafter, to apply for leave. Simultaneously, he can apply for re-transfer to Udyogamandal. I make it clear that such application filed by the petitioner shall be considered with due compassion since he is directed to take charge of a work far away from his native place, for, it will always be the desire of any sensible person to come back to his native place and to serve the employer in a peaceful atmosphere during the rest of his service period.

With the above observations, the writ petition is disposed of.

K.K.DENESAN, JUDGE

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